

REMARKS**Double Patenting**

In response to this rejection, the undersigned represents that to the best of his knowledge that this Application, and Application 10/410,068, and Application 10/040,170 were, at the time this invention was made, commonly owned by The Rohm and Haas Company. This rejection should be withdrawn.

Patentability

In response to the Examiner's final rejection of Claims 1 – 5 and 7 – 9 as anticipated by U.S. Patent No. 5,731,377 ("Friel"), the applicants disagree, especially with regard to the Examiner's views toward the data on pages 17 – 24 of the Specification. Specifically, the applicants have shown that the data in Table 4.1 (page 20) refute the assumption that, on the basis of similarities in monomer compositions, it may be concluded that emulsion polymers made by a given process are the same as, or obvious in light of, emulsion polymers made by another process. The applicants have pointed out that large differences are seen in the scrub resistance data in Table 4.1 for 6 polymers made by 6 different processes, using the same monomer compositions. All other formulation components are held constant for the samples tested, except, as the Examiner has correctly noted, the levels of rheology modifier employed in the formulation.

The Examiner's point is that by having different rheology modifier levels between "inventive" and "comparative" examples the comparison is "not proper." Actually, these different rheology modifier levels made the comparison more, not less, proper. As established in the Declaration of Matthew S. Gebhard, the higher rheology modifier levels used in the Comparative Examples as contrasted with the inventive Examples was purely to hold the viscosity constant across both comparative and inventive samples, without which the coating thickness of the samples would vary (Declaration of Matthew Gebhard, paragraph 4). Coating thickness will impact the number of scrub cycles required to cut through the coating in a scrub resistance test (Declaration of Matthew Gebhard, paragraph 4).

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On the other hand, it is well known to one skilled in the art that the rheology modifier type and level has a completely insignificant effect on the test results at equal dry film thickness (Declaration of Matthew Gebhard, paragraph 5), and the applicants have merely followed the standard test procedure for this method of evaluating coatings of equal thickness. It is also well known in the industry that the polymer (binder) has the dominant effect in controlling the scrub resistance of coatings of equal thickness (Declaration of Matthew Gebhard, paragraph 5). Thus, the minor adjustment of the level of rheology modifier for each sample was done in order to make a more fair comparison. Therefore, a practitioner skilled in the art would know that the data presented in Table 4.1 shows that the polymers presented in inventive Examples 1 and 2 of the Invention confer superior scrub resistance properties to the coating compared to the polymers in Comparative Examples A-D.

On the basis of these data, one must only conclude that the nature of products of emulsion polymer processes are strongly dependent on process specifics, a fact well known to those skilled in the art. In light of these data, applicants submit that there is no basis to assume that the products of Friel are the same as those produced by the inventive process. Neither does Friel provide any motivation to the practitioner to modify his processes in manner provided by the current application. The Comparative Examples shown in the Application are representative of the prior art including Friel, and a more fair comparison is presented *via* the use of the rheology modifier adjustment to give equal viscosity and therefore equal coating thickness (prior art vs. inventive samples).

Applicants respectfully request that claims 1-5 and 7-9 be allowed over Friel in light of these arguments and observations. Applicants believe that the arguments presented with regard to Friel address the examiner's objection to claim 6 as well. Applicants therefore request that claim 6 be allowed.

Respectfully submitted,



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